

JOSEPH WACHTER

IBLA 75-631

Decided September 22, 1975

Appeal from decision of the Montana State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease, M-24869 ACQ.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

An oil and gas lease, terminated by operation of law for failure to make timely payment of the advance rental, may be reinstated only when the failure to make payment of the annual rental on or before the anniversary date was justifiable or not due to a lack of reasonable diligence. Mailing the rental payment from California to Montana the day before its due date does not constitute reasonable diligence.

APPEARANCES: Joseph Wachter, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Joseph Wachter appeals from the May 13, 1975, decision of the Montana State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of oil and gas lease M 24869 ACQ. The annual rental payment was due no later than May 1, 1975, the anniversary date of the lease. The payment was mailed from Burlingame, California, a city near San Francisco, on April 30, 1975, and was received in Billings, Montana, on May 5, 1975. The lease terminated by operation of law due to appellant's failure to pay the annual rental on time. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(a).

[1] Leases terminated by operation of law for failure to pay the annual rental on time may be reinstated if the late payment was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c). Reasonable diligence has been exercised where the payment was sent sufficiently in advance of the due date to account for normal delivery time and normal delays in the collection, transmittal and delivery of the mail. 43 CFR 3108.2-1(c)(2). William N. Cannon, 20 IBLA 361 (1975). Sending a payment the day before its due date does not constitute reasonable diligence. Gordon R. Epperson, 16 IBLA 60 (1974). One would expect normal delivery over that distance to take longer than one day, allowing for normal delays. Moreover, one could not reasonably anticipate delivery in one day even if there were no delays of any kind. See William N. Cannon, *supra*; W. E. Hester, Jr., 18 IBLA 420. Clearly reasonable diligence has not been exercised in this case.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

Frederick Fishman  
Administrative Judge

